Supreme Court, U.S.
FILED

No. 091253 FEB 25 2010

In The OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED

STATES

ADOLFUS O'BRYAN GILES,

Petitoner

V.

WAL-MART STORES EAST,

Respondent

On Petition For Writ Of Certiorari To
The United States Court of Appeals For The
Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Adolfus Giles
608 Lakeview Dr
Monroe, Ga 30656
678-598-6443

QESTIONS PRESENTED

The Following questions are presented by the Petitioner:

1. Whether The Civil Right Act 1964- Which prohibits discrimination in public facilities, in government, and in employment, apply to all U.S. Citizens?

2. Whether 42 U.S.C. 2000e-5(g) section 706 or 717 of Civil of Rights Acts of 1964, which allow relief for engaging in unlawful intentional employment discrimination apply to all U.S. Citizens?

3. Does an American Citizen have a Constitutional right to petition the Federal Grand Jury to investigate crimes committed against them?

4. Does an American Citizen have a Statutory right to petition the Federal Grand Jury to investigate crimes committed against them?

PARTIES TO THE PROCEEDINGS

The Petitioner is Adolfus O'Brian Giles in the Supreme Court of theUnited States. The Respondents is Matthew G. Laflin (counsel for Defendant),Charlotte K. McClusky (counsel for Defendant), and Litter Mendelson (Respondent's Firm). In which, they are defending Wal-Mart Store East. The United States Circuit Judges are Carnes, Hull, and Marcus.

TABLE OF CONTENT

PAGE

QuestionPresented.....i
Parties to the Proceedings.....ii
Table of Content.....iii-iv
Table of Authorities..... ....v-vi
OpinionBelow.....1
Jurisdictional Statement.....2
Federal Constitutional and Statutory
Provisions involved.....3
Statement of the Case.....4
Reason for Granting the Writ.....5-9
Conclusion.....10

APPENDIX INDEX

Volume1 Appendix A. Order of U.S. District Court Granting a More Definite Statement.....1a-1a-6a

Appendix B. Order of U.S. District Court Dismissing Plaintiff Complaint.....1b-1b-5b

Appendix C. Order of State Court of Appeals Denying Appeal 1c-1c-7c

Appendix D. Order of State Court of Appeals Denying Rehearing En banc.....1d-2d

Appendix E. Opinion of State Court of Appeals mandate decision.....1e-1e

Certificate of Compliance.....11

TABLE OF AUTHORITIES

PAGE

STATUTES; RULES & ACTS

Title VII Civil Right Act 1964..... I,3,5
Civil Right Act of 1991..... 5
Title VII 42 U.S.C. 2000e-5..... I
28 U.S.C. & 1254 (1)..... 2
Fed. Rule 13.1-13.3..... 2
Ninth Amendment..... 3
Fourteenth Amendment..... 3

APPENDIX AUTHORITIES

STATUTES; RULES & ACTS

Fed. Rule 8.....2a,4a,5a,2b,3b,3c,5c,6c
Fed. Rule 10.....5a,3b,3c,5c,6c
Fed. Rule 12.....2a,5a,2b,6c,7c
Fed. Rule 35.....1d
Fed. Rule 41.....6c
eg., id at 327.....4a

CASES

GJR Inv., Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1368 & 1369 (11th Cir.1998).....3a,4a,4b,7c

CASES

Washington v. Dep't of Children & Families, 256 F. APP'X 326, 328.....3a,4a,5a,4b

Betty K. Agencies, LTD. V. M/V Monada 432 F.3d 1333, 1337 (11th Cir.2005).....3c,6c

Anderson v. Dist. Bd. Of Trs. of Cent. Fla.Cmty.Coll., 77 F.3d 364, 366 (11th Cir.1996).....5c

Moon v. Newsome, 863 F.2d 835 (11th Cir.1989).....6c

Alba v. Montford, 517 F.3d 1249, 1252 (11th Cir.), cert. denied, 129 S. Ct. 632 (2008).....6c,7c

OPINION BELOW

The Order of the United States Court of appeals for District of Eleventh Circuit filed December 28,2009 affirming United States District Court Motion to Dismiss Plaintiff's complaint. Order by Judge Clay D. Land on August 17,2009.

The Order of the United States Court of Appeals for the Eleventh Circuit filed February 10,2010 denying the Plaintiff's petition for Rehearing Enbanc. Entered by United State Circuit Judge Hull.

The Opinion of the United States Court of Appeals for the Eleventh Circuit issued as the mandate of that court on February 18,2010. Affirming the Judgment of that court.

JURISDICTIONAL STATEMENT

A timely petition for Rehearing En banc filed in the U.S. Court of Appeal for The Eleventh Circuit was denied February 10,2010. The Court of Appeals' final Judgment was entered on February 18,2010. This Court's Jurisdiction is invoked Pursuant to 28 U.S.C & 1254 (1). In accordance with Supreme Court of United State Rule 13.1 – 13.3; ninety calendar days is given to file a Writ of Certiorari. After, the date of entry of Judgment order or opinion, or the date a timely filed Petition for rehearing is denied, or a Subsequent judgment based on the grant of the Petition for rehearing, within which to file with the clerk a petition for a Writ of Certiorari.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Ninth Amendment provides: " [T]he enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others Retained by the people."

2. The Fourteenth Amendment provides: "All persons born or naturalized in the United States, and subject to the Jurisdiction there of , are citizens of the United States and of the state wherein they reside. No state shall make or Enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its Jurisdiction the equal protection of the laws.

3. The Civil Right Act 1964: outlawed racial segregation in schools, at the Workplace and by facilities that served the general public.

STATEMENT OF THE CASE

This Writ of Certiorari is filed on behalf of Appellant-Petitioner, Adolfus O'Brian Giles. There were a appeal following United States District Court, Motion To Dismiss Defendant complaint. By not following Federal Rules of Civil Procedure. Order by Judge Clay D. Land on 08/17/2009. A Notice of Appeal was Timely enter by the Appellant-Petitioner on 08/19/2009. The Appellant Pro Se Brief was timely filed by October 13,2009. Which didn't included a request for Oral Argument. The Appellee filed a timely brief on October 13,2009. There were No "reply brief' on behalf of the Appellant-Petitioner. The Appeal was never set For Oral Argument. Instead, a panel decision was entered, affirming the District Court decision. A petition for Rehearing was timely filed on January 7,2010 in U.S. Court of Appeals. A order denying the petition for Rehearing Enbanc was Enter on February 10,2010 by United State Circuit Judges Carnes, Hull,& Marcus; enter by Judge Hull. The Court entered a issue of mandate affirming the Court Judgment on February 18,2010. A petition for Writ of Certiorari is being Timely filed.

REASON FOR GRANTING THE WRIT

I. The Court should grant the Writ to uphold the law and for justice to be served

The Civil Right Act 1964- It prohibit discrimination in public facilities in Government, and in employment. The Civil Rights Acts of 1991- was strength and Improve Federal Civil Right laws, to provide for damages in cases of intentional Employment to Clarify provision regarding disparate impact actions, and for other Purposes. Battery is an assault in which the person makes physical contact without the permission of the other person. Assault & Battery is also a class 3 Misdemeanor. I argue that the lower courts didn't consider the facts. That Wal-Mart East violated these rights, and committee these crimes. I went to the law and government for representation. My handicap ability not being able to follow Federal Rule Procedures, doesn't exclude me the victim from receiving Justice. Even After, taking all the correct steps and procedures to Obstruct Justice.(EEOC)

II. The Court should grant the Writ because the court didn't basic the case on it's merit.

My case was never completely heard by the Court, do to my complaint didn't meet Federal Rule Procedures. Making it different from others. After, following all rules and procedures of a public facility, and going to EEOC. The Writ should be Granted. Without evaluating and judging cases basic on their merits. There wouldn't be Justice. The Supreme Court of the United States understanding Judging cases basic on their merits and facts; is the courts job. Additional, this Case would be enlisted as pernicious.

III. The Court should grant the writ because the case wasn't dismiss for lack of evidence.

Due to the tapes, and papers from the Georgia Department of Labor from the Unemployment hearing; the humorous confessing of the creation of a bug environment. The cameras from my isolated work area, show proof of the promotion and creation of a hostile environment; including 64 trash cans. Wal-Mart manager confessed

to creating a bug infested environment and ordering me "to get bite by bugs". Which is a violation of OSHA, and controversial remarks. By the managers being the opposite race and singling me out make it race-discriminatory. Wal-Mart violated my rights by under paying me fifth cents for two years or more, Garnishment fraud that help tarnished my credit. After, years of debt supposedly gotten paid and I was looking for a new start. Harassing phone calls, and mail returned all over again. In which, all creditors had to be reported to Federal Trade Commission for illegal collection tactic/harassment.

Wal-Mart went through the litigation with me on Aggravated Stalking and Temporary Protective Order. Then the employer tried to incriminate me with the Temporary Protective Order (TPO). After, I had submitted them with all Court's Document from Superior Court.They hired and put the female on the same shift and department. Had to make contact, after Court orders was zero contact. The female approach me, made a scene, pulled a razor and threaten to cut my face (TPO still in effect).

Then Wal-Mart had me lock in a room, assaulted by co-workers, and a gun pull on me. In which, the gun was pointed at the upper part of my body (shoulders or above). I could have being murder, having to wrestle over a gun for my life. Two managers also assaulted me; one with a forced elbow to the back and I could have sustain severe injuries. The other manager push me several times, spit in my face, and a kicking gesture to my rear, as he fire me. Trying to provoke me to hit him. After, putting me in a isolated work area, with 64 trash cans, overloading me with work, and foul smell & bugs infestation. Plus, I was fired for throwing contained items away (bug infested). In which, it was my job duties; Damage Reclaim Clerk. The items wasn't scan able because of maggots, bugs, and molded. The employer gave me the right to make the decision. On what is scan able and not scan able. Due to the bugs, environment, and other co-workers. I made the correct decision and was terminate. Up to my last day, all of my decision was made correctly. I was preventing others from bugs bites and following OSHA guideline (hazard environment). Meaning, that I was wrongfully terminated. Due to the fact that I

was following work policy and procedures. Wal-Mart would be at fault, regardless of the race of the managers. By it being someone of the opposite race, make it Race-discriminatory. Which the court simply can't ignore. Violence, weapons, hazard workplace, and abuse are prohibited in a public facility. All of these allegation are facts and have evidence for proof. It's on tapes, cameras, check stud, Government paper, and work Personnel file. I was a target and was single out almost daily, for almost six years.

CONCLUSION

The lower Court's decision should be reverse. They didn't take inconsideration that someone rights was violated. The law is here to protect and serve every individual. When broken or violated it must be Justice. I Adolfus Giles took all necessary step to Obstruct Justice. It would be unfair and unlawful for me to not receive Justice, even after going to EEOC. After, all I been through with Wal-Mart and left to be a Pro Se Plaintiff. The proceeding of this trial has boost my Stress level. I'm seeking relief and by law I'm entitle to it. The law prohibits wrongful termination and discrimination. Reconsider the fact that I'm a stressful Pro Se Appellant and not by choice. The petition for a Writ of Certiorari should be Granted.

Respectfully submitted,
Adolfus Giles
608 Lakeview Dr
Monroe, Ga 30656
678-598-6443

4-10-10

APPENDIX

Volume 1

Appendix A (US District Court Order &
Filed On March 3,2009.....1a-6a

In The United States District Court
For The Middle District Of Georgia
Athens Division

ADOLFUS GILES	*	
Plaintiff,	*	
Vs	*	Case No.3:09-CV-18(CDL)
WAL-MART STORES EAST, L.P.,	*	
Defendant.	*	
	*	

ORDER

Plaintiff Adolfus Giles brings this action against his employer, Defendant Wal-Mart Stores East, L.P., asserting various claims related to his employment. Presently pending before the Court is Defendant's Motion to Dismiss, or in the Alternative, Motion for a More Definite Statement (Doc. 5). For the following Reason, Defendant's motion is granted.

DISCUSSION

Federal Rule of Civil Procedure 8 sets forth the requirements for pleading in Federal Court. A pleading that states a claim for relief, such as Plaintiff's Complaint in this case, must contain: (1) A short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdiction support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief. Fed. R. Civ. P. 8(a). Allegations in a complaint "must be simple, concise, Direct." Fed. R. Civ. P. 8(d) (1). When a defendant contends that a plaintiff's complaint "is so vague or ambiguous that the [defendant] cannot reasonably prepare a response [,]" the defendant may ask the court to require the plaintiff to make a more definite statement of the plaintiff's claims for relief. Fed. R. Civ. P. 12(e).

In this case, Defendant contends that it cannot adequately respond to Plaintiff's claims because the Complaint lacks

"information regarding the dates of the alleged harasser (s) or Bad actors, or any factual information supporting these allegations." (Def.'s Mot. To Dismiss, or in the alternative, Mot. for a More Definite Statement 4.) Defendant also asserts that it "cannot differentiate between which alleged facts support which of [Plaintiff's] many claims." (ID.) Accordingly Defendant seeks dismissal of Plaintiff's Complaint, or in the Alternative, an order requiring Plaintiff to make a More Definite Statement of his claims.

As it currently stands, Plaintiff's Complaint "presents scores of allegations regardless of their relevance "and loosely associates these allegations with "haphazardly described . . . 'right. ' " GJR Inv., Inc. v. County of Escambia, Fla., 132F.3d 1359, 1368 (11th Cir. 1998). This type of pleading makes it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief [.]" Washington v. Dep't of Children & Families, 256 F. App'x 326, 328 (11th Cir. 2007) (per curiam) (internal quotation marks omitted). When a plaintiff's complaint does not provide a defendant with adequate

notice of the plaintiff's claims against it, the complaint is considered insufficient under the Federal Rules of Civil Procedure. See id. An insufficient complaint is subject to dismissal. See id.

The court recognizes that Plaintiff is proceeding in this case pro se. "Courts do and should show a leniency to pro se litigants not enjoyed by those with the benefit of a legal education." GJR Inv., 132 F.3d at 1369; see also Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice."). However, this leniency is Not without limits. The Court is not required "to serve as de facto counsel for a party or to rewrite an otherwise deficient pleading in order to substain an action[.]" GJR Inv., 132 F.3d at 1369 (internal citations omitted). Moreover, Defendant should not have "to sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted." Washington, 256 F. App'x at 328 (alteration in original) (internal quotation marks omitted). The burden is squarely on Plaintiff to comply with the Court's procedural rules in the same manner as any other litigant. See, e.g., id. at 327.

In addition to failing to provide "a short and plain statement" of his claims in accordance with Rule 8(a), Plaintiff's Complaint also violates other Federal Rules of Civil Procedure. For example, Plaintiff fails to "state its claim . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b); Plaintiff also fails to set forth each allegation simply, concisely, and directly. Fed. R. Civ. P. 8(d). As it now exists, Plaintiff's Complaint is Deficient under the Federal Rules of Civil Procedure. see, e.g., Washington, 256 F. App'x at 328. In light of Plaintiff's pro se status, however, the Court will not dismiss Plaintiff's Complaint. See id. (holding that the district erred by dismissing pro se plaintiff's complaint with prejudice before allowing plaintiff an opportunity to provide more definite statement or otherwise comply with Rule 8). Instead, the Court orders Plaintiff to make "a short and plain statement of the claim showing that the pleader is entitled to relief [.]" Fed. R. Civ. P. 8(a) (2). In doing so, Plaintiff should set out each of his claims for relief separately, specify which factual allegations support each claims, and otherwise comply with the Federal Rules of Civil Procedure. If Plaintiff

fails to make a more definite statement within ten (10) days of the date of this Order, the Court will dismiss Plaintiff's Complaint in accordance with Federal Rule of Civil Procedure 12(e).

CONCLUSION

For the foregoing reasons, Defendant's motion (Doc. 5) is granted to the extent Defendant seeks an order requiring Plaintiff to make a more definite Statement.

IT IS SO ORDERED, this 31st day of March, 2009

S/Clay D. Land

CLAY D.LAND

United States District Court

APPENDIX

Volume 1

Appendix B (US District Court Order &
Filed on August 17,2009).....1b-5b

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ATHENS DIVISION

ADOLFUS GILES,	*	
Plaintiff,	*	
Vs.	*	CASE NO. 3:09-CV-18(CDL)
WAL-MART STORES EAST, L.P.	*	
Defendant,	*	
	*	

ORDER

This action arises from Plaintiff Adolfus Giles's various claims against his employer, Defendant Wal-Mart Stores East, L.P. Presently pending before the Court is Defendant's Renewed Motion to Dismiss (Doc. 12). For the following reasons, the Court grants Defendant's Motion.

On March 31, 2009, the court granted

Defendant's motion for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) after concluding that Plaintiff's Complaint made it virtually impossible for Defendant to know which allegations of fact were intended to support which of Plaintiff's purported causes of action. Giles v. Wal-Mart Stores E., L.P., No. 3:09-CV-18 (CDL), 2009 WL 902011, At *1 (M.D. Ga. Mar. 31, 2009). The Court ordered Plaintiff to "make 'a short and plain statement of the claim showing that the pleader is entitled to relief[.]' " ID. at *2 (alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)). The Court informed Plaintiff that he was required to "set out each of his claims for relief separately, specify which factual allegations support each claim, and otherwise comply with the Federal Rules of Civil Procedure." Id. The Court warned Plaintiff that failure to make a more definite statement would result in dismissal of Plaintiff's complaint.

On April 3, 2009, Plaintiff timely filed what he contends is a more definite statement of his claims. However, the composition of Plaintiff's response to the

Court's Order is virtually identical to his previous submissions to the court. As a result, Defendant filed its renewed motion to dismiss, arguing that it still could not frame a reasonable response to Plaintiff's allegations and that Plaintiff's response did not comply with Court's March 31st Order.

The Court agrees. Plaintiff's Complaint and his response to the March 31st order violate the March 31st Order and the Federal Rules of Civil Procedure in at least three ways. First, the allegations contained in Plaintiff's submissions are not "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Second, Plaintiff ignored the Court's admonition to "state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstance." Fed. R. Civ. P. 10 (b). Third, Plaintiff has not followed the Court's instruction to clearly identify "which allegations of fact are intended to support which claims(s) for relief[.]" Washington v. Dep't of Children & Families, 256 F. App'x 326, 328 (11th Cir. 2007) (per curiam) (internal quotation marks omitted).

It is Plaintiff's duty to conform its pleadings with the Federal Rules of Civil Procedure and the orders of this Court. The Court cannot "serve as de facto counsel for a party," and it cannot "rewrite an otherwise deficient pleading in order to sustain an action[.]" GJR Inv., Inc. v. County of Escambia, Fla., 132 F. 3d 1359, 1368 (11th Cir. 1998). Likewise, Defendant should not have to "sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted." Washington, 256 F. App'x at 328 (alteration in original) (internal Quotation marks omitted). Because Plaintiff failed to comply with the Court's March 31st Order and because Defendant cannot reasonably be expected to frame a response to Plaintiff's Complaint, it is dismissed.

CONCLUSION

For the foregoing reasons, the Court grants Defendant's Motion to dismiss Plaintiff's Complaint (Doc. 12).

IT IS SO ORDERED, this 17th day of August,2009. S/Clay D.LandUnited States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ATHENS DIVISION

ADOLFUS GILES, *

Plaintiff *

*Case Number 3:09-

Vs. * CV-18(CDL)

WAL-MART STORES*
EAST, LP,

Defendant*

_____*

JUDGMENT

Pursuant to this Court's Order dated August 17, 2009, and for the reasons stated therein, JUDGMENT is hereby entered in favor of Defendant. Plaintiff shall recover nothing of Defendant. Defendant Shall also recover costs of this action.

This 17th day of August, 2009.Gregory J. Leonard, Clerk S/ Gail G. Seller Deputy Clerk

APPENDIX

Volume 1

Appendix C (Court of Appeal Order &
Filed on December28,2009).....1c-7c

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 09-14233
Non-Argument Calendar

D. C. Docket No. 09-00018-CV-CDL-3

ADOLFUS O'BRIEN GILES,
Plaintiff-Appellant,

Versus

WAL-MART DISTRIBUTION CENTER,

Defendant-Appellee

Appeal from the United States District Court For the Middle District of Georgia

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(December 28, 2009)

Before CARNES, HULL and MARCUS, Circuit Judges.

PER CURIAM:

Adolfus O Brien Giles appeals the district court's dismissal of his

Employment discrimination action against his former employer, Wal-Mart. The district court dismissed Giles's pro se complaint because Giles did not comply with the district court's order to file a more Definite statement conforming to the pleading requirements of the Federal Rules of Civil Procedure. After review, we Affirm. 1

I.BACKGROUND

Giles's original pro se complaint was a four-page, single-spaced document containing two very long, unnumbered paragraphs. Substantively, the original complaint consisted of a rambling personal narrative of Giles's workplace complaints that suggested numerous possible claims, including race and national origin discrimination, retaliation, hostile work environment, unjust termination, wrongful wage garnishment, and physical assault by a co-worker, among others.

WAL-MART moved to dismiss Giles's complaint or alternatively for a more definite statement. In its order granting Wal-Mart's motion for a more definite statement, the district court described in detail the ways in

Which the original complaint failed to comply with Federal Rules of Civil Procedure 8 & 10.

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1 we review a district court's dismissal of a complaint for failure to comply with court rules for an abuse of discretion. Betty K Agencies, Ltd. V. M/V Monada, 432 F.3d 1333, 1337 (11th Cir. 2005). "Discretion means the district court has range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." ID. (quotation marks omitted)

Specifically, the district court explained that the complaint lacked information regarding dates of incidents or identities of the alleged bad actors, did not differentiate which facts supported which claims, and did not state claims simply and concisely in numbered paragraphs each limited to a single set of circumstances. The district court ordered Giles to file a more definite statement that complied with Rule 8 and to "[s]et out each of his claims for relief separately, specity[ing] which factual allegations support each claim and otherwise comply with the Federal Rules of Civil Procedure." The district court also warned Giles that if he failed to comply with

the order within ten days, it would dismiss his complaint.

Giles filed a document entitled "Plaintiff's More Definite Statement," that amended some of his original allegations to include dates parenthetically, broke allegations into shorter, but still unnumbered, paragraphs and added a "Conclusion" requesting $354 million in punitive damages and 1 million in Compensatory damages, but, the amended complaint did not address each claim separately or identify which facts supported each claim. In fact, substantively,the amended complaint was essentially identical to the original complaint. As a result, the district court granted Wal-Mart's renewed motion to dismiss, finding that Giles's amended complaint did not comply with the Federal Rules of Civil Procedure and Giles had not complied with the district court's earlier order to cure the deficiencies in his complaint.

II.DISCUSSION

On appeal, Giles concedes that his pro se amended complaint did not comply with the pleading requirements of Federal Rules

of Civil Procedure, and we agree. Giles's amended complaint did not contain "a short and plain statement of the claim showing that the pleader is entitled to relief," or make "each allegation. . . be simple, concise, and direct." See Fed. R. Civ. P. 8(a)(2), (d)(1). Further, Giles's amended complaint did not "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." See Fed. R. Civ. P. 10(b). Instead, Giles's amended complaint consisted of a lengthy series of unnumbered paragraphs containing what amounts to a personal narrative suggesting, but not clearly and simply stating, a myriad of potential claims. In other words, Giles's amended complaint is a classic "shot gun" pleading in that it is not possible to know which factual allegations support which claims for relief. See Anderson v. Dist. Bd. Of Trs. of Cent. Fla. Cmty. Coll., 77 F.3d 364, 366 (11th Cir. 1996).

Thus, despite guidance from the district court on how to cure the deficiencies in his complaint and a clear warning that noncompliance would be cause for dismissal, Giles did not comply with the district court's

Order to file an amended complaint in conformity with the requirements of rule 8 and 10. Under these Circumstances, the district court did not abuse its discretion in dismissing the amended complaint. SEE Fed. R. Civ. P. 12(e) (providing that, if a party ordered to provide a more definite statement does not provide such a statement within ten days, the district court is empowered to strike the pleading); Betty K. Agencies, 432 F.3d at 1337 (stating that, if the defendant so moves, the district court may also dismiss a case under Federal Rule of Civil Procedure 41(b) for failure to comply with its order); Moon v. Newsome, 863 F.2d 835, 837 (11th Cir.1989) ("While dismissal is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of Discretion.").

We find meritless Giles's argument that justice required the district court to "over look the fact that [he] was unable to fill out a Complaint correctly" and to address his claim on their merits. Although "pro se pleadings are held to a less strict standard than pleadings filed by lawyers and thus are construed liberally," Alba v. Montford, 517

F. 3d 1249, 1252 (11th Cir.), cert. denied, 129 S. Ct. 632 (2008), This liberal construction "does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." GJR Invs., v. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998). Even a pro se litigant is required to comply with the Federal Rules of Civil Procedure, particularly after being expressly directed to do so.

AFFIRMED

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2 The most recent amendments to Rule 12 went into effect on December 1, 2009 and, thus do not apply.

APPENDIX

Volume1

Appendix D (Court of Appeal Order & Filed on February 10,2010) 1d-2d

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 09-14223-BB

ADOLFUS O BRIEN GILES,

Plaintiff-Appellant,

Versus

WAL-MART DISTRIBUTION CENTER,

Defendant-Appelle.

. .....

On Appeal from the United States District Court for the Middle District of Georgia

.....

ON PETITION (S) FOR REHEARING AND PETITION (S) FOR REHEARING EN BANC

Before: Carnes, Hull and Marcus, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing En Banc are

Denied.

ENTERED FOR THE COURT:

F.Hull

UNITED STATES CIRCUIT JUDGE

APPENDIX

Volume 1

Appendix E (Court of Appeal Opinion, Filed February 18,2010) 1e

UNITED STATES COURT OF APPEALS

For the Eleventh Circuit

No. 09-14233

District Court Docket No.
09-00018-CV-CDL-3

ADOLFUS O'BRIEN GILES,

Plaintiff-Appellant,

Versus

WAL-MART DISTRIBUTION CENTER,

Defendant-Appellee.

.....

Appeal from the United States District Court

For the Middle District of Georgia

.....

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court. Entered: December 28, 2009, For the Court: Thomas K. Kahn, Clerk By: Patch, Jeffrey

CERTIFICATE OF COMPLIANCE

No.

Adolfus O'Brian Giles,

Petitioner(s)

V.

Wal-Mart Store East,

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the

Petition For a writ of certiorari contains 4910 words, excluding the parts of The petition that are exempted by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct. Executed on April 10, 2010

Adolfus O'Brian Giles